

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5918 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

JAYENDRAKUMAR N BHATT

Versus

COLLECTOR

Appearance:

Shri Y.S. Lakhani, Advocate, for the Petitioner

Shri A.G. Uraizee, Asst. Govt. Pleader, for
Respondent No. 1

Shri Suresh M. Shah, Advocate, for Respondent No.
2

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 09/09/96

ORAL JUDGEMENT

The order passed by the Collector of Rajkot
(respondent No.1 herein) on 12th June 1996 is under

challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 1 accepted the application made by respondent No.2 herein for getting measured by the City Survey Superintendent two parcels of land bearing Plots Nos. 3 and 43 situated at Kalawad Road in Ward No. 15 in Rajkot. Its copy is at Annexure E to this petition.

2. It is not necessary to set out in detail the facts giving rise to this petition as this petition can be disposed of on a preliminary objection raised by and on behalf of learned Advocate Shri Suresh M. Shah for respondent No. 2 herein. By way of preliminary objection, it has been urged that the petitioner has an alternative remedy by way of revision under sec. 211 of the Bombay Land Revenue Code, 1879 (the Code for brief). As against this, learned Advocate Shri Lakhani for the petitioner has urged that the revisional jurisdiction is discretionary in nature and it can never be said to be an efficacious alternative remedy.

3. In this connection a reference deserves to be made to the binding ruling of the Supreme Court in the case of State of Goa and others v. Messrs. A.H. Jaffar and Sons reported in AIR 1995 SC 333 as relied on by learned Advocate Shri Suresh M. Shah for respondent No. 2. In that case, the order of the State Government passed in the context of the Mineral Concession Rules, 1960 as framed under the Mines and Minerals Regulation and Development Act, 1957 was challenged before the High Court under art. 226 of the Constitution of India without availing of the remedy of revision under sec. 30 thereof. In that context the Supreme Court has held that the power of revision under the aforesaid statutory provision was the proper course to be adopted by the petitioner in that case. By implication it was held to be an efficacious alternative remedy. The aforesaid binding ruling of the Supreme Court is on all fours applicable in the present case. It cannot be gainsaid that the impugned order of respondent No.2 is revisable under sec. 211 of the Code. In that view of the matter, the preliminary objection raised by learned Advocate Shri Shah for respondent No.2 against maintainability of this petition on the ground of availability of an efficacious alternative remedy deserves to be sustained.

3. In view of my aforesaid discussion, I am of the opinion that this writ petition deserves to be rejected without examination of its merits. It will be open to the petitioner to move the appropriate forum for challenging the order at Annexure E to this petition by

means of an appropriate proceeding.

4. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs. The interim relief stands vacated.

5. At the oral request of learned Advocate Shri Lakhani for the petitioner the interim relief is ordered to continue for a period of 15 days from today to enable the petitioner to approach the appropriate forum for ventilation of his grievances.
